

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

August 25, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No. 05OD-266

Oahu

Authorize the issuance of a Request for Qualifications / Request for Proposals for public lands at Honouliuli, Ewa, Island of Oahu, Hawaii.

Tax Map Key: (1) TMK 9-1-31:01, 25, 26, and 37

**REQUEST:**

Authorize the issuance of a Request for Qualifications / Request for Proposals ("RFQ/RFP") to select a potential lessee for public lands at Honouliuli, Ewa, Oahu

**APPLICANT:**

Department of Land and Natural Resources ("DLNR"), Land Division

**LEGAL REFERENCE:**

Sections 171-6, 16, 18, 17, 19, 35, 36, 41, 59, and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

**SUBJECT PROPERTY:**

Location:

Portion of Government lands situated at Honouliuli, Ewa, Oahu, Hawaii, identified by Tax Map Key: (1) 9-1-31:01, as shown as the shaded area on **Exhibit A**. The property is known as Land Court Lot 12022, as shown on Land Court Map 888 of Land Court Application 1069 and described on Land Court Certificate of Title No. 498,504. This parcel shall be referred to hereinafter as the "**Subject Property**".

Area:

110.106 acres, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

Zoning:

State LUC District: Urban

City and County of Honolulu Zoning Code: I-2 (intensive industrial)

Trust Land Status:

Section 5(a) lands of the Hawaii Admission Act; Public Law 88-233

DHHL 30% entitlement lands pursuant to Hawaii State Constitution: No

Legal access:

Staff has verified that there is legal access to the property from a public street (Kalaeloa Boulevard) over Lots 3163 and 3164 (which are not public roadway lots), as shown on Land Court map 325 of Land Court Application 1069.

Current Use Status:

Vacant, except for a vacated residence and old livestock holding pens

**ADJACENT LOTS:**

Location:

Portion of Government lands situated at Honouliuli, Ewa, Oahu, Hawaii, identified by Tax Map Key: (1) 9-1-31:25, 26, and 37, as generally shown on **Exhibit A**, also known as Land Court Lots 12021, 12020, and 12019, respectively, as shown on Land Court Map 888 of Land Court Application 1069 and described on Land Court Certificate of Title No. 498,504.

Property Summary:

TMK 9-1-031:	Land Ct Lot	Acres	Current Tenant; Current Use
25*	12021	6.685	Hawaii Livestock Cooperative (DOA Lease S-8500); Livestock slaughtering and processing
26*	12020	3.769	Cates International, Inc. (DOA Lease S-8501); Aquaculture
37	12019	3.630	Island Commodities Corporation (sublessee of Hawaii Meat Company, Limited-DLNR Lease S-5512); Bioconversion processing

\*Under Executive Order 3801 to Dept of Agriculture ("DOA") for Agricultural Park purposes

Remarks:

These three lots (referred to hereinafter as the "**Adjacent Lots**") are included in this submittal for the limited purpose of providing flexibility to prospective lessees of the Subject Property to consider constructing a public roadway to the Subject Property because the Subject Property does not directly abut a public roadway.<sup>1</sup> The RFQ/RFP will allow prospective lessees of the Subject Property to submit proposals that provide for a public roadway (which may include utility infrastructure) over or across a portion of any of the Adjacent Lots. If selected to be the lessee by DLNR, such lessee may pursue construction of the roadway, with the consent of the existing tenants of the affected Adjacent Lot or as may otherwise be permitted under the terms of the existing lease agreements with such tenants or as permitted by law.<sup>2</sup> Nothing in this submittal or in any lease for the Subject Property shall modify any rights of any existing tenants of the Adjacent Lots as set forth in their respective lease agreements.

<sup>1</sup> As noted above, legal access to the Subject property is only via an easement over two non-public roadway lots

<sup>2</sup> Section 4 of the DOA leases and §41 of the DLNR lease reserves the right unto the Lessor to withdraw lands from the respective leases for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds.

### **STATUTORY AUTHORITY:**

HRS Section 171-59(a) provides that a lease of public land may be disposed of through negotiation upon a finding by the Board that the public interest demands it and provides a process under which the Board may select the lessee.

The process requires that public notice of the disposition be given, that applications be solicited from prospective lessees, and that the Board evaluate the applications according to criteria established by the Board and determine which applicants meet the criteria. If only one applicant meets the criteria, the Board may dispose of the lease by negotiation. If two or more applicants meet the criteria, the Board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the Board.

Relevant excerpts of HRS Section 171-59(a) are attached as **Exhibit B**.

### **CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:**

This action before the Board is merely a request for the authorization to issue a Request for Qualifications / Request for Proposals ("RFQ/RFP") to select a lessee. This action does not, in and of itself, constitute a use of State lands or funds. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. The issuance of a lease pursuant to the RFP will be conditioned upon the proposed lessee's prior compliance with all Chapter 343 environmental requirements regarding the lessee's proposed use of the property.

### **BACKGROUND:**

The Subject Property and Adjacent Parcels are located at Honouliuli, Ewa, Oahu, and are located within the Campbell Industrial Park. The Subject Property and the Adjacent Parcels were acquired by the State by condemnation in 1997 for the purposes of "land banking, protection and preservation of agricultural lands, and for providing for various public uses." Prior to condemnation, the Subject Property was used as a livestock feedlot. Since termination of the feedlot operations, the property has remained primarily vacant and underutilized, in large part due to the lack of roadways and utility infrastructure.

The Subject Property has excellent development and revenue generating potential as an industrial subdivision because (i) it is zoned for industrial use under the City and County of Honolulu's zoning ordinance; (ii) it is located within Campbell Industrial Park (which is one of Oahu's major industrial parks); and (iii) there is an extreme shortage of available industrial space on Oahu.<sup>3</sup> Other uses allowed under the current I-2 zoning may also be considered.

In addition to receiving interest from parties interested in developing an industrial park or industrial subdivision, Land Division has also received inquiries from parties interested in leasing the property for other industrial uses and for use as a raceway park.

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<sup>3</sup> According to a January 25, 2006 report released by Colliers Monroe Friedlander, Honolulu has the nation's biggest shortage of industrial space, with a 1.8% vacancy rate.

**REQUEST FOR QUALIFICATIONS / REQUEST FOR PROPOSALS ("RFQ/RFP"):**

HRS Section 171-59(a) provides that a lease of public land may be disposed of through negotiation (rather than by public auction) upon a finding by the Board that the public interest demands it. HRS Section 171-59(a) also provides a process under which the Board may select the lessee, which process entails the public solicitation of applications/proposals from prospective lessees and allows the Board to select the lessee based on its evaluation of the applications/proposals.

Development of the Subject Property will entail significant predevelopment efforts (e.g., preparation/processing of EIS, obtaining SMA approval, etc) and a substantial investment to construct the necessary infrastructure. Staff believes these efforts are best undertaken by a private lessee with the necessary development expertise and financial capacity.

Due to the size of the Subject Property, the wide range of possible uses or development plans for the property under the current zoning, and the expertise and substantial investment required to develop the property, staff believes a lease for the property should be issued by direct negotiation with a lessee selected via a public RFQ/RFP rather than via the public auction process. The RFQ/RFP process will allow the Board to evaluate prospective lessees based on a variety of factors, such as the applicant's qualifications (e.g., experience, expertise, and financial capacity), and proposed development plans for the property (e.g., the feasibility of the development plans and the proposed benefits to the State), whereas the public auction process would award the lease based solely on the highest lease rent bid at the auction.

The proposed RFQ/RFP process is in accordance with HRS §171-59. The RFQ phase of the RFQ/RFP process provides for the Chairperson to establish criteria for selection of the lessee and determine which applicants meet the criteria as required under HRS §171-59. If there is more than one applicant that meets the RFQ criteria, the RFP phase provides for the qualified applicants to submit proposals, and the Board will select the highest offer (i.e., the best proposal).

Staff is requesting the Board authorize the Chairperson to issue the RFQ/RFP, establish the evaluation criteria, evaluate the qualifications of the applicants, solicit proposals from the qualified applicants (if there is more than one qualified applicant), evaluate the proposals, select the best proposal, and present the proposal to the Board for approval at a meeting open to the public. Upon the Board's approval of the selected applicant, the Chairperson will enter negotiations with the selected applicant of a development agreement and proposed lease. The development agreement and lease will be submitted to the Board for approval at a meeting open to the public. An outline of the proposed process is provided as **Exhibit C**.

The following is a brief summary of proposed evaluation criteria for both the RFQ and RFP stages:

Request for Qualifications ("RFQ"). Staff anticipates the applicants will be evaluated based on criteria that includes, at a minimum, the following:

- *Experience and Expertise.* The applicant shall possess the appropriate experience and expertise in successfully planning, designing, permitting, developing, financing,-

constructing, managing and operating projects comparable (in size, complexity, scope and services) to the one the applicant intends to develop on the Subject Property

- *Financial Capacity.* The applicant shall possess the financial resources and the proven ability to arrange debt and equity financing for projects comparable to the one the applicant intends to develop on the Subject Property

Request for Proposals ("RFP"). Staff anticipates the proposals of the qualified applicants will be evaluated based on criteria that includes, at a minimum, the following:

- *Development and Business Plan.* The soundness and feasibility of the applicant's development proposal, management, marketing, financial and development plans for the Subject Property, and the extent to which the applicant's proposal meets DLNR's development goals and objectives for the Subject Property.
- *Financial Plan.* The applicant's ability to fund/finance the applicant's proposed off-site and onsite improvements and proposed operations.

#### **PROPOSED DEVELOPMENT AGREEMENT AND LEASE:**

DLNR will negotiate a development agreement with the selected applicant. Staff anticipates the development agreement will include various obligations that must be satisfied by the selected applicant (such as the preparation and processing of any required environmental assessments or impact statements, obtaining all necessary land use entitlements and permits, etc), and that upon satisfaction of all such terms and conditions, DLNR will issue a 65-year ground lease to the selected applicant to allow the development of the applicant's proposed project.

The development agreement may also address issues such as the selected applicant's obligations to construct or bond necessary infrastructure and provisions that address the determination of the lease rent to be paid under the lease.

#### **REMARKS:**

The Subject Property has excellent development and revenue generating potential to the State, and staff believes the proposed RFQ/RFP process is in accordance with the requirements of HRS Section 171-59(a) and is preferable to the public auction process for selecting a lessee for the Subject Property.

Staff circulated a request for comments to DLNR's proposed disposition of a lease for the Subject Property to various federal, state, and county agencies, as well as to OHA and HECO. DLNR received no objections to the proposed disposition from any of these agencies.

In addition, staff previously contacted the Chairperson of the Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34 to explain the proposed action and offered to make a presentation to the neighborhood board. The Neighborhood Board Chairperson acknowledged that it is early in the process and that there will be future opportunities for input/comment, but also recommended that an outline of the proposal be sent to each neighborhood board member, which was done by letter dated February 28, 2006.

As indicated in the outline of the proposed process (see **Exhibit C**), future opportunities for public input and comment include two future Board meetings, as well as public comment periods and hearings required as part of the EA/EIS review process and SMA application process.

**RECOMMENDATION:**

That the Board:

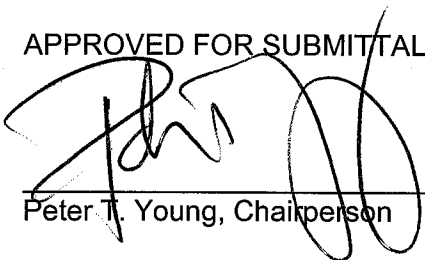
1. Find that the public interest demands that a lease for the subject property be disposed of through negotiation pursuant to Section 171-59(a) of the Hawaii Revised Statutes, as amended ("HRS").
2. Delegate the authority to the Chairperson to (i) issue a request for qualifications / request for proposals ("RFQ/RFP") consistent with HRS §171-59(a) for the selection of the lessee; (ii) establish the criteria for evaluating and selecting the lessee; (iii) accept and evaluate the applications submitted by prospective lessees; and (iv) make a preliminary determination and recommendation to the Board of the best applicant.
3. Authorize the Chairperson to modify the RFQ/RFP process or requirements if in the best interest of the State and consistent with HRS Section 171-59.

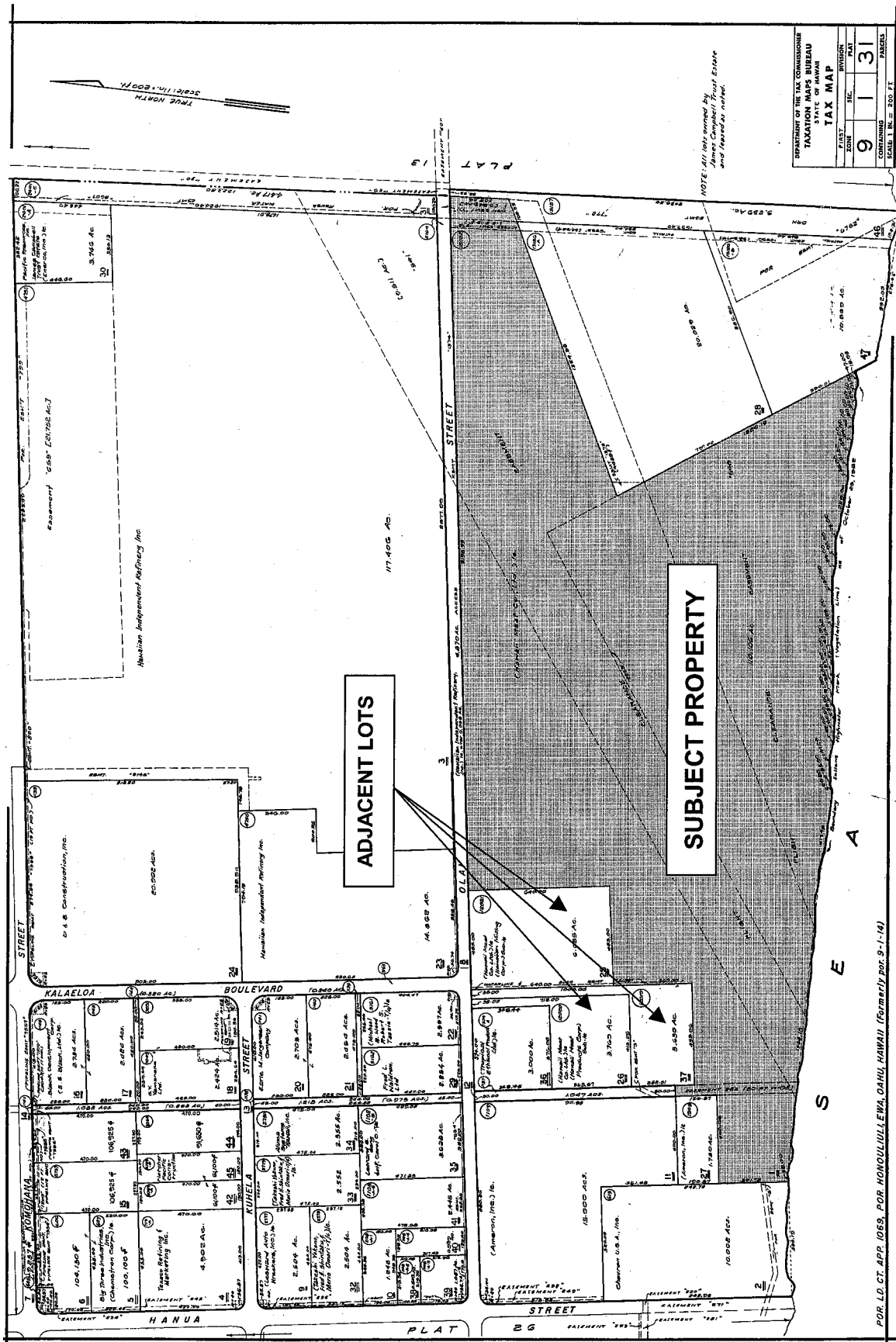
Respectfully Submitted,



Keith Chun  
Planning and Development Manager

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson



FOR L.D. CT. APP. 1069. FOR HONOLULU LEWA. OAHU, HAWAII (Formerly por. 9-1-14)

## **EXCERPT FROM HRS §171-59**

**§171-59 Disposition by negotiation.** (a) A lease of public land may be disposed of through negotiation upon a finding by the board of land and natural resources that the public interest demands it. Where the public land is being sought under this section by a sugar or pineapple company, and the company is the owner or operator of a mill or cannery, then, for the purposes of this section, the economic unit shall be that acreage of public land which when taken together with the lands already owned or controlled or available to the company, when cultivated is found by the board to be necessary for the company's optimum mill or cannery operation. In all other cases, public land to be sold under this section shall be an economic unit as provided in section 171-33(3).

After a determination is made to negotiate the disposition of a lease, the board shall:

- (1) Give public notice as in public auction, in accordance with the procedure set forth in section 171-16(a), of its intention to lease public land through negotiation setting forth the minimum conditions thereunder, the use for which the public land will be leased. Any person interested in securing the lease shall file an application with the board not later than forty-five days after the first publication of the notice;
- (2) Establish reasonable criteria for the selection of the lessee; provided that where the intended use of the land is agriculture, the department of agriculture shall establish the criteria;
- (3) Determine the applicants who meet the criteria for selection set by the board or the department of agriculture, as the case may be, and notify all applicants of its determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board or the department of agriculture were followed; provided that if any applicant does not notify the board of the applicant's objections, and the grounds therefore, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria.

If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in (3), above, dispose of the lease by negotiation.

If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the board.



## OUTLINE OF PROPOSED PROCESS

1. Board of Land and Natural Resources (the "Board") authorizes issuance of RFQ/RFP
2. DLNR publishes notice of, and issues, RFQ
3. DLNR (or an evaluation committee) reviews applicants' submitted qualifications and determines which applicants meet the evaluation criteria
4. If more than one qualified applicant, DLNR issues RFP to the qualified applicants (or to a "short list" of qualified applicants)
5. DLNR (or an evaluation committee) evaluates proposals and selects applicant with best proposal for recommendation to the Board
6. DLNR presents selected applicant to the Board for approval (at a public meeting)\*\*
7. DLNR enters into exclusive negotiations with selected applicant of a development agreement and proposed lease
8. DLNR presents development agreement and proposed lease to the Board for approval (at a public meeting)\*\*
9. DLNR and selected applicant execute development agreement
10. Selected applicant undertakes due diligence and seeks necessary land use approvals and permits (e.g., EIS and SMA processes)\*\*
11. If selected applicant satisfies all terms/conditions of the development agreement, DLNR issues lease to selected applicant

\*\*Public review/comment opportunities